

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GARDEN CITY BOXING CLUB, INC.,

Plaintiff,

-against-

PUEBLA'S GROCERY, INC. d/b/a PUEBLA'S
RESTAURANT and ANGEL L. CHIMBO,

Defendants.
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AMON, UNITED STATES DISTRICT JUDGE:

Plaintiff Garden City Boxing Club, Inc. filed this action on August 28, 2006, alleging violations of the Communications Act of 1934, as amended, 47 U.S.C. §§ 553 and 605. Defendants Puebla Grocery, Inc. and Angel L. Chimbo have not responded to the complaint or otherwise appeared to defend this action. Accordingly, on March 16, 2007, plaintiff moved for a default judgment pursuant to Federal Rule of Civil Procedure 55(b).¹ I referred that motion to Magistrate Judge Robert M. Levy for a Report and Recommendation (R&R), which he issued on November 5, 2007. Therein, Magistrate Judge Levy recommends that plaintiff be awarded \$4,396.00 in damages, but also that plaintiff not recover attorney's fees and costs.

The time within which to file objections to the R&R expired on November 20, 2007. No objections have been filed. Accordingly, Magistrate Judge Levy's R&R is hereby adopted as the

¹Plaintiffs have failed to obtain a notation of default from the clerk of the court. See Fed. R. Civ. P. 55(a); Enron Oil Corp. v. Diakuhara, 10 F.3d 90, 95 (2d Cir. 1993). While such a notation should be obtained prior to a motion for an entry of a default judgment, such an error is excusable. See Meehan v. Snow, 652 F.2d 274, 276 (2d Cir. 1981). Accordingly, as stated in Magistrate Judge Levy's R&R, the clerk of the court should note the default prior to entering the default judgment in this case.

opinion of the Court. The clerk of the court is directed to note the defendants' default, enter judgment, and to close this case.

SO ORDERED.

Dated: Brooklyn, New York
November 29, 2007

Carol Bagley Amon
United States District Judge